

1 Ira S. Somerson, CPP

2 | assault in a casino.

3 Q. Do you remember testifying that Trump Plaza's
4 casino had inadequate security?

5 A. I do not remember what I testified to. Each
6 time the best thing I can do is to research those
7 that you wish me to and, with the client's
8 permission, get you copies of whatever reports or
9 testimony they permit me to give you, especially on
10 open matters.

11 Q. 7583?

12 A. Closed. I remember this one occurred in
13 Delaware County. Oh, yeah. This was an armed
14 robbery in front of a drugstore in Chester County.
15 It might have been Delaware County.

16 Q. Do you remember what you testified?

17 A. No, absolutely not. That's an oldie.

18 Q. Okay. I'm going to try to talk to you about
19 some of the depositions. We went through some of
20 the trials.

21 A. We're going to go through the same process
22 now for all deps?

23 Q. Perhaps. I don't know yet.

24 MR. PENNINGTON: Well, I have an
25 appointment at 2:00 at the U.S. attorney's o



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2 I guess I should cancel that, right?

3 MR. YANINEK: Off the record.

4 (Discussion held off the record.)

5 BY MR. YANINEK:

6 Q. Mr. Somerson, the list that you gave me
7 related to depositions is not dated. Is there any
8 reason --

9 A. (Witness indicating.)

10 Q. This is trial. This is depositions.

11 A. Isn't that this?

12 Q. I mean, the dates for the actual --

13 A. It's just the way the construct of the
14 database was set up. The depositions is different.
15 That's all.

16 Q. Well, that's what I'm trying to find out.
17 I'm not suggesting anything suspect.

18 A. No, no. But if I have it in here, I'll be
19 glad to give it to you as we go through.

20 We do a search routine and then print so
21 much up. Somebody left out the date, so it doesn't
22 pop up.

23 Q. Is there a way that you can produce a list
24 for depositions that has the dates?

25 A. Yes.



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2 Q. Okay. Could you do that?

3 A. Just give it to him as an item to be
4 provided. Because, see, all these requests are
5 going to take time.

6 Q. How long would it take to do that?

7 A. I don't know how many you're going to want,
8 but to redo that and include the date is at least an
9 hour. Just how long --

10 MR. YANINEK: Let's go off the record.

11 (Discussion held off the record.)

12 THE WITNESS: Now we're now looking at
13 deps?

14 BY MR. YANINEK:

15 Q. Depositions, yes, sir.

16 A. Your first file number?

17 Q. Something related to hospitals.

18 Do you recall any within the last four
19 years that were related to a healthcare facility?

20 A. No. May very well be, but I don't recall.

21 Q. Can you tell me how the deposition list is
22 organized?

23 A. May I see it?

24 Q. Page 1 and 2.

25 A. All I do is a search, and if under the column



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2 of Deposed there's a yes --

3 Q. Yes. But the names that are retrieved don't
4 come out alphabetically, correct?

5 A. No.

6 Q. And they don't come out numerically in the
7 file number either?

8 A. No, but you can sort on any one of those
9 fields, but then you can juxtapose other fields.
10 You can only sort on one column at a time.

11 Q. Okay. So --

12 A. This is Access, if you're familiar with it.

13 Q. I'm not.

14 So is it fair to say, then, that the
15 first item, 7390, listed is not the oldest item,
16 it's not chronological?

17 A. The oldest item will be the lowest file
18 number.

19 Q. Okay.

20 A. The newest number will be the larger file
21 number.

22 Q. I got you. Because I assume that these --
23 they're in the 7000's, so you've had over 7000 --

24 A. Since 1981, I started with 7000. That's the
25 number I began with.



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2 Q. So you haven't had 7000 files?

3 A. Oh, no. I began arbitrarily with the number
4 7000. It was sometime much later than that that the
5 Federal Rules required that I keep this kind of
6 database. So I don't remember the date, but I began
7 to maintain this kind of file.

8 Q. Let's just look at 7715.

9 A. That's open.

10 Q. And you provided deposition testimony?

11 A. If it says so, I have, yes.

12 Q. Do you know what date?

13 A. I'm going to try to answer that right now.
14 Probably when we developed this form, we didn't ask
15 for that column, but I'm going to get it for you.

16 The deposition date was 8/22/2000. And
17 it was a club, a bar, a stage, an accident. Oh,
18 this is a wet T-shirt contest, and one of the male
19 exuberants slipped on the water.

20 Q. Okay.

21 A. And was tragically hurt.

22 Q. And you testified on his behalf?

23 A. Certainly.

24 Q. This is, obviously, a unique kind of case.
25 Do you remember what you testified?



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2 A. Essentially, that there was no supervision
3 over -- that the males were just allowed to climb up
4 on the stage. One of the exhibitors became a little
5 zealous and to win -- you know, they won like a cash
6 prize -- she started pouring bottles of water over
7 herself and then the guy ran up on the stage,
8 slipped, fell, did a split and got hurt pretty bad,
9 rightfully so.

10 Q. You testified on his behalf?

11 A. I'm just being facetious. Please make
12 this...

13 Q. I understand.

14 And you opined that there wasn't proper
15 supervision of the event?

16 A. Absolutely wasn't. There was nobody there.
17 But off the record. The guy got what he deserved.

18 Q. Let's go up to 7563.

19 A. Closed.

20 Q. Do you remember what that case was about?

21 A. It's in Texas. Assault, rape, residential
22 apartment, parking lot, security officer services.

23 Q. Okay. And you testified, according to my
24 paper, on behalf of the plaintiff, Hope Shaw?

25 A. Correct, on 8/16/95.



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2 Q. She was the victim of the assault, I assume?

3 A. Yes.

4 Q. And you testified that the, I guess, English
5 Swiss Village --

6 A. I don't remember the content of my testimony
7 at all.

8 Q. You don't remember or believe that it might
9 have been that the security in the parking lot was
10 inadequate?

11 A. I'm always asked to evaluate, give my time,
12 pay for my time, to evaluate what security is, not
13 for an opinion, but to evaluate and pay for my time.
14 But for me to remember what my opinion was that long
15 ago now would be a gross misrepresentation of fair
16 testimony.

17 I think you're going to find that true
18 on just about every one of these you ask me about.
19 I don't walk around with what I testified about in
20 my head. Some of them, like the wet T-shirt
21 contest, do stand out.

22 Q. How about looking at 7521?

23 A. Closed.

24 Q. Do you remember --

25 A. West Virginia.



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2 Q. -- the nature of the case?

3 A. Getting there. Oh, yeah. John Nixon versus
4 Flying J. The name rings a bell.

5 Q. I assume it involves a truck stop?

6 A. Yeah. I was deposed on 2/16/95. You wanted
7 that date.

8 Q. Okay.

9 A. It was a truck stop. It was a robbery. It
10 was assault and there was oil sold there. It was a
11 retail establishment on the property and a service
12 station. It was a typical service/truck stop.

13 Q. Do you remember what the substance of your
14 testimony was?

15 A. No. And I represented --

16 Q. Defendant?

17 A. Defendant.

18 Q. Let's go to 7519, another West Virginia case.

19 A. Number again? I beg your pardon.

20 Q. 7519.

21 A. Tom Wilson. Nice guy. That's why I
22 remember.

23 It's closed.

24 Q. Do you remember what the case was about or do
25 you have any information?



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2 A. It's coming.

3 Q. Okay.

4 A. It's funny what you do remember.

5 It was in West Virginia. Oh, I do very
6 well remember this one. I represented plaintiff
7 against a guy named Skidmore, who owned truck stops
8 and convenience stores along the highway. And he
9 had a woman working for him named Thelma Leigh
10 Blake, who was very nice too, and she was horribly
11 assaulted. She was stabbed and left for dead with a
12 knife.

13 It was at a truck stop. She also had to
14 take care of the laundromat, and there was a
15 robbery.

16 And I didn't think I gave you the date.
17 The date of the trial was 7/26/95. There was also a
18 deposition of 1/6/95. It's one of my more memorable
19 cases, as a matter of fact. Horrible case.

20 Q. And do you remember what opinion you gave or
21 rendered?

22 A. Mr. Skidmore was grossly negligent, although
23 I didn't use the word "grossly," because I consider
24 that to be a legal conclusion. I think I said
25 reprehensibly.



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2 Q. And how was he reprehensibly negligent?

3 A. Well, he just cut short all security measures
4 and exposed the people who worked for him to high
5 levels of risk, without any regard to their own
6 personal safety, after repeated and persistent
7 attacks on the property. That one went all the way
8 up to Supreme Court in the state.

9 Mr. Skidmore was very politically
10 influential at the county level. We had to get
11 around that.

12 Q. Let's go to 7740, Estate of Donovan Blanding
13 versus Fleet Bank, N.A.

14 A. Oh, I remember this case very well. It's
15 closed. It was a bank in Newark, New Jersey, Estate
16 of Donovan Blanding versus Fleet Bank. I
17 represented Mr. Blanding. When I say "I," my client
18 did.

19 Q. Sure.

20 A. I was deposed on 4/25/01. And it was a
21 homicide, a man who pulled up to an ATM alongside of
22 the bank and was shot to death in a robbery.
23 Horrible death.

24 Q. And do y

25 your testimony was?



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2 A. In that particular case, I do. Bad lighting,
3 bad location of the ATM. It should have been -- all
4 of the stereotypical complaints that one would have
5 of a poorly designed ATM. But specific to the point
6 of giving you detail, no. I'd have to get the file.

7 Q. Okay. So the location of the ATM machine
8 was --

9 A. It isolated it from public surveillance. It
10 kept it from police surveillance. It kept it from
11 proper lighting exposure, made it easy for the
12 criminal actor to lay and wait for his target of
13 opportunity, et cetera, et cetera.

14 It was just a very poorly designed ATM
15 drive-up, especially when they had two excellent
16 ones on the other side of the building, which they
17 could have left open and shut that one down at
18 night.

19 As you can see, I remember that case
20 considerably more. Pretty nasty crime.

21 Q. Let's talk about one in Florida, 7364.

22 A. Number?

23 Q. 7364.

24 A. Closed. Jack Vital, in the State of Florida.
25 I was deposed on June 29, 1990. I went to trial on



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2 that on July 30, 1990.

3 I remember the case because it was a
4 very unusual one where some fans that were alongside
5 the track were slaughtered when a car went off the
6 raceway and ran over the fans.

7 Q. And what area of your expertise did you
8 use --

9 A. You're missing a point. All security
10 management is the same.

11 Q. Okay.

12 A. What our job is to do is to look at a
13 facility and say, within a reasonable degree of
14 certainty -- and if we can't, then bring in other
15 expertise -- what could happen here, what are they
16 doing to prevent what could happen here, assess it
17 for its -- and then what do they need to do to
18 prevent the more foreseeable risks from occurring,
19 both to deter it, to detect it, to deny it, respond
20 to it and recover from it. And all security
21 management is that, no matter what kind of property,
22 including hospitals.

23 Q. So in that case, you gave testimony that the
24 speedway positioning of the crowd was a risk?

25 A. Well, the crowd wasn't allowed to be there,



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2 number one. Number two, vehicles had already gone
3 off at that point previously. Number three, there
4 were not adequate barriers to keep vehicles from
5 going into their -- and all of this was determined
6 as part of the discovery and evaluation.

7 It's unfair to say that all of these
8 things occur only because of economic consequences.
9 That's not true. Very often it's just the wrong
10 people are retained to analyze risk and give their
11 advice to their client. Many very fine people might
12 spend the money if they knew what the risks were.

13 Q. In your CV it has an award, the Paul Hanson
14 Distinguished Service Award. What's that?

15 A. I can blow my horn, if you want an answer.

16 Q. Go ahead, blow it.

17 A. That has been awarded seven times in the 21st
18 Century. It's Mike Pulitzer, giving people who have
19 significantly made a contribution to their industry.
20 And I was awarded that at an international symposia
21 in Washington in the Senate dining room.

22 It's upstairs on the wall, if you want
23 to see it. It's something I'm extremely proud of.
24 I think it's because I gave enough money.

25 Q. Well, how much did you give?



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2 A. Oh, I don't know. You know, your time and
3 your participation and your travel and your
4 volunteer services add up to dollars. And wherever
5 they found me, you know, I was wherever they wanted.
6 I was around a lot. And I do, I love volunteer
7 work.

8 MR. PENNINGTON: Just keep in mind any
9 glib or facetious statement is going to be viewed
10 differently on the --

11 THE WITNESS: I don't believe I've been
12 too glib.

13 MR. PENNINGTON: No. I mean -- .

14 THE WITNESS: I just feel that --

15 MR. PENNINGTON: It's an honor bestowed
16 upon you.

17 THE WITNESS: It was a significant
18 honor, which I'm very proud of. But people with
19 certain kinds of egos, I think, take them too
20 seriously. We have to remember, we're honored at
21 these events and they're always fundraisers, so we
22 have to measure our own ego to the purpose.

23 So I'm very proud of it, that they chose
24 me instead of somebody else.

25 Is that correctly worded?



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2 MR. PENNINGTON: Just answer his
3 question. That's all you need to do.

4 THE WITNESS: Okay, Steve. I get
5 embarrassed.

6 MR. YANINEK: I'll mark this as 3.

7 (Exhibit Somerson-3 marked for
8 identification.)

9 THE WITNESS: Can I get out of my
10 database?

11 MR. YANINEK: Sure.

12 MR. PENNINGTON: I think, if we can
13 agree, for the purposes of your report, let's just
14 stick to the exhibit. It's just going to make it
15 easier. So if he wants to refer to something in the
16 exhibit, you can just look at it. Okay, Ira?

17 THE WITNESS: Mm-hmm. I can just shut
18 it down then and look at the exhibit.

19 BY MR. YANINEK:

20 Q. If you think you might need to keep it on --

21 A. No. I think it will be more efficient if I
22 just look here with you. I really do.

23 Q. All right.

24 A. Good advice.

25 MR. PENNINGTON: Take a break for just a



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2 minute while he does that.

3 MR. YANINEK: Okay.

4 (Short recess.)

5 BY MR. YANINEK:

6 Q. Mr. Somerson, I have before you what's marked
7 Somerson Exhibit No. 3. Have you seen that document
8 before?

9 A. Yes.

10 Q. Is that your report in this case?

11 A. Yes.

12 Q. It's dated October 29, 2002. On the first
13 page of the report, it's addressed to Mr. Williams.
14 It says Preliminary Report. Do you see that?

15 A. Yes.

16 Q. Have you provided Mr. Williams with any other
17 reports other than the one before you marked
18 Exhibit-3?

19 A. No.

20 Q. So before October 29, 2002, did you ever send
21 him a draft to review before this report was finally
22 published?

23 A. No.

24 Q. Other than what I'll mark --

25 MR. YANINEK: Mark this as 4.



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2 (Exhibit Somerson-4 marked for
3 identification.)

4 BY MR. YANINEK:

5 Q. Other than what I've marked as Somerson-4,
6 are those the only two documents that you ever sent
7 to Gerald J. Williams or his law firm?

8 A. Yes.

9 Q. Can you explain to me how you put together
10 that report?

11 A. Which one?

12 Q. The Exhibit-3.

13 A. Exhibit-3 is very much the way I would do an
14 analysis for a client if I were a consultant. I
15 look at what I know to be the risks based on the
16 materials that I reviewed, what I know the inherent
17 risks of the industry are, what I know the security
18 strategies to be at the facility, and I then render
19 an opinion based upon my analysis of these data.

20 Q. Before you rendered your opinion, did you
21 have any preliminary discussions about your opinion
22 with either Mr. Pennington or Mr. Williams or anyone
23 else from the Williams Cuker & Berezofsky --

24 MR. PENNINGTON: Berezofsky.

25 BY MR. YANINEK:



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2 Q. -- law firm?

3 A. Well, that is my practice when I'm retained.
4 I will often send what I'll call an issues outline
5 to a client to assist them in doing discovery and
6 investigation so that I can get an informational
7 flow that will assist me with my report.

8 It is not an opinion. It is not
9 constructed to be an opinion, but merely an assist
10 for them so that they can get the kind of discovery
11 investigation I want. That's what the September 9th
12 document is of 2002.

13 Q. Other than the September 9th document and
14 October 29th document, what other communications did
15 you have with anyone from Mr. Williams' law firm?

A. None, other than billing or correspondence.

17 MR. PENNINGTON: The initial telephone
18 call.

19 THE WITNESS: Yeah; other than routine
20 business communication. Nothing concerning
21 opinions.

22 BY MR. YANINEK:

23 Q. Did you have any telephone conversations --

24 A. I do not log my telephone conversations, so I
25 can't answer you in any candor. Any communication



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2 that I have is in that file and it would be in
3 writing. I do not log phone calls. I'm a
4 corporation of one person. I just don't have the
5 resources.

6 Q. Let me show you a letter. I'm going to mark
7 a letter from Mr. Williams dated October 10, 2002.

8 MR. YANINEK: I want to mark this as
9 Somerson-5.

10 (Exhibit Somerson-5 marked for
11 identification.)

12 BY MR. YANINEK:

13 Q. Mr. Somerson, is that a letter that you
14 received from Mr. Williams in this case?

15 A. Yeah. I remember this letter.

16 Q. Is that a letter you received from
17 Mr. Williams?

18 A. Yes.

19 Q. At the end of the letter, he requests you to
20 call him relative to the letter. Do you see that?

21 A. Yes.

22 Q. And did you call him?

23 A. I don't know. I really do not know.

24 Q. Is it your standard procedure in your
25 business if a client asks you to call him, to do



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2 what the client asks?

3 MR. PENNINGTON: Objection.

4 THE WITNESS: The answer is no. Clients
5 very often render advice or send me facts which puts
6 me in the middle and which I don't necessarily
7 respond to or which I've already considered or I
8 don't find necessary to or I happen to be in the
9 State of Colorado when this comes in and I don't
10 have a chance to talk to them about it. Too many
11 intervening events occur.

12 But my reports are, essentially, made up
13 of my own independent analysis, period. But I do
14 remember reading this.

15 BY MR. YANINEK:

16 Q. But you don't remember if you ever complied
17 with the request of Mr. Williams?

18 A. If I would have relied upon it, it would have
19 been used in my report of October 29th.

20 MR. YANINEK: I'd like to mark this as
21 6.

22 (Exhibit Somerson-6 marked for
23 identification.)

24 BY MR. YANINEK:

25 Q. Mr. Somerson, I'm marking Somerson-6 --



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2 MR. PENNINGTON: Let me see it, please.

3 BY MR. YANINEK:

4 Q. Is that a letter you received from
5 Mr. Williams in this case?

6 A. You know, I just about read this one, because
7 I sort of ignored it. I really don't remember it.
8 It's not anything that I referred to or relied upon.

9 Q. Well, I'm asking if you received it.

10 MR. PENNINGTON: It was in the letter
11 that you produced to me, so --

12 THE WITNESS: Yes.

13 MR. PENNINGTON: -- we can stipulate to
14 the fact that you received it.

15 THE WITNESS: If it was in my file
16 folder, then I received it.

17 BY MR. YANINEK:

18 Q. That's all I'm asking.

19 A. Forgive me.

20 Q. Simple question, I thought.

21 A. Excuse me. I misunderstood.

22 Q. So based on the date of this letter, I would
23 assume that you had some type of a communication
24 with Mr. Williams prior to August 28th, 2002?

25 A. Prior to August?



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2 Q. 28th, 2002, the date of this letter.

3 A. Well, I wasn't retained until September 3rd.
4 So I'm not quite sure how that fits.

5 Q. Okay.

6 A. He might have been just sending me
7 information before he made the decision to retain
8 me.

9 Q. Well, my question was not when you were
10 retained, but did you have communications with
11 Mr. Williams prior to August 28, 2002?

12 A. All I can tell you is that according to this,
13 I was sent a check on August 26th, which I received
14 on September 3rd, and this was the covering letter
15 to that retainer check. That's all I can factually
16 tell you.

17 Q. So you don't know if you had a communication
18 via phone, personal meeting with Mr. Williams prior
19 to August 26, 2002?

20 A. I do not recollect that.

21 Q. Would there be anyone else that would take
22 such a call in your business for you?

23 A. I'm a one-man corporation.

24 Q. According to your report, you reviewed 11
25 items, correct?



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2 A. Yes.

3 Q. Those are the only 11 items that you have
4 knowledge of related to this case?

5 A. Prior to the report being written.

6 Q. Subsequent to the report, you received the
7 deposition transcript, I believe --

8 A. Of a woman named -- can you help me out with
9 her name?

10 Q. Candice Highfield, I think?

11 MR. PENNINGTON: No; Carol Joerger.

12 MR. YANINEK: Carol Joerger.

13 THE WITNESS: And the report of --

14 MR. PENNINGTON: Rolle's report.

15 THE WITNESS: -- the plaintiff expert.

16 BY MR. YANINEK:

17 Q. Right.

18 Did Mr. Williams tell you there was
19 other information related to this case exchanged
20 through discovery?

21 A. I reviewed this information I've disclosed
22 only to prepare my report. I am unaware of any
23 other discovery.

24 Q. That's not my question. My question was, did
25 Mr. Williams make you aware that there was other



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2 information available that was obtained through
3 discovery?

4 A. No.

5 Q. Is it fair to say, then, he selected the
6 items that were sent to you to review?

7 A. I don't know, because I sent him an issues
8 outline and presumed he was being responsive to it.

9 Q. Were you aware that the parents of Mr. Schorr
10 were deposed?

11 A. No.

12 Q. Were you aware that Mr. Schorr's roommate at
13 the time was deposed?

14 A. No.

15 Q. Were you aware that the police officers
16 involved in the shooting were deposed?

17 A. I did receive some information from the
18 police officers, but I don't recall what it is,
19 sitting here now.

20 Q. But you didn't review their transcripts?

21 A. No.

22 MR. PENNINGTON: Well, I think you have
23 to refer him to the documents he had.

24 THE WITNESS: Yes. That's what I'm
25 looking at right now. It's very hard to make



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2 that -- that's why I need this.

3 BY MR. YANINEK:

4 Q. Well, I'm just trying to make sure what --

5 MR. PENNINGTON: Well, he is. Gary
6 Berresford and Harry Hart are on here. You know,
7 why don't ask him to review it.

8 MR. YANINEK: All right.

9 THE WITNESS: Berresford is on here,
10 Dougherty is on here.

11 BY MR. YANINEK:

12 Q. When you're reviewing a case, is it important
13 to have all the information that's available through
14 discovery?

15 A. No.

16 Q. Why not?

17 A. It depends on what my objective is. If I'm
18 evaluating the security of a hospital, if I'm
19 evaluating the security program, then I would have
20 little information for the damages or the facts
21 involving plaintiff's well-being unless it pertained
22 to the security program. All the information in the
23 file is not always relevant to my analysis.

24 Q. Do you agree that there could be a number of
25 causes to an incident?



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2 A. Yes.

3 Q. So wouldn't it be important to know all the
4 information that could relate to each specific cause
5 for why the incident occurred?

6 A. Could be, but not in this case.

7 Q. Why not?

8 A. This case was very clear-cut. The elopement
9 took place on a very clear set of circumstances that
10 were known to the hospital, and I don't think a
11 deeper understanding of the family or of the
12 plaintiff would have changed my opinion about the
13 security program at the hospital.

14 Q. And in this case, you're retained by the
15 plaintiffs' counsel. Do you believe it would be
16 important to know if the plaintiff, the decedent in
17 this case, was at all at fault for the incident?

18 A. My instructions were to evaluate the security
19 program of the hospital. I did not think I was
20 qualified medically to evaluate the plaintiff.

21 Q. Have you evaluated cases where individuals
22 have had problems, psychiatric problems, resulting
23 in their injury?

24 A. No.

25 Q. So is this the first case you've ever



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2 evaluated that someone had a psychiatric --

3 A. I evaluate security at facilities. I do not
4 evaluate psychiatric catalysts to an incident. It's
5 beyond my expertise.

6 Q. Is this the first case that you've ever
7 evaluated that involved an individual that had
8 bipolar disorder?

9 A. No.

10 Q. What other cases have you had?

11 A. I don't remember, but plenty.

12 Q. Okay. None in the last four years?

13 A. I don't remember.

14 Q. You said "plenty." But none in the last four
15 years that you could recall?

16 A. I don't recall when, under what circumstances
17 and how many of them were literally bipolar. That
18 is a psychiatric prognosis, and I can't offer you
19 whether they were or weren't. I know what bipolar
20 is meant, but I'm not qualified to --

21 Q. I'm not asking you to make the diagnosis.
22 I'm asking you, did you have involvement in a case
23 or cases within the last four years that involved an
24 individual who had a bipolar disorder?

25 A. Based on that specific request, I'd have to



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2 say I don't know, because I don't know at what time
3 I'm looking at a bipolar condition and whether or
4 not the circumstances surrounding the cause of the
5 incident was as a result of a bipolar disorder.

6 Q. All right. I'll be more specific.

7 In the last four years, have you
8 evaluated a case where the plaintiff was alleged to
9 have had a bipolar disorder?

10 A. I don't remember.

11 Q. In the entire breadth of your work as an
12 expert, other than the case in question, do you
13 remember a case where you evaluated it on behalf of
14 the plaintiff where the plaintiff had or was alleged
15 to have been diagnosed what bipolar disorder?

16 A. The only thing I can say is that I've been
17 involved in cases where plaintiffs have alleged to
18 have had psychiatric or psychological disorders. It
19 was never my expertise, nor my purpose, to identify
20 them or analyze them. So I can't sit here today and
21 tell you whether they were or were not bipolar
22 disorders.

23 Q. Did you ever have any cases involved with
24 involuntary commitments, other than the case at
25 hand?



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2 A. Yes.

3 Q. Within the last four years?

4 A. Yes.

5 Q. Can you tell me what the name of the case is?

6 A. No, but I know it was a hospital in
7 Philadelphia. And I know that case is still open,
8 so I'm going to have to get clearance before I give
9 it to you. Very interesting case.

10 Q. Was it one that you've listed here in the
11 depositions and trials since 1989?

12 A. I'm not even sure whether I testified on the
13 case, but it involved death by asphyxiation to
14 somebody who was under the influence of cocaine and
15 was being retained and restrained by the hospital in
16 a secure room.

17 Q. Okay. Was this for -- not a hospital issue,
18 but was this person brought to the hospital on an
19 involuntary 302 warrant?

20 A. I don't know if it was a 302, but, yes, he
21 was brought in involuntarily.

22 Q. So as we sit here today, you cannot tell me
23 if this case involved the delivery of a patient to a
24 hospital related to a potentially involuntary
25 commitment under 302?



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2 A. How they're involuntarily committed is not my
3 issue. My issue is how they're secured once they
4 get there.

5 Q. So for the purpose of your evaluation, you
6 don't consider the regulations that a hospital has
7 to comply with when treating a patient under 302?

8 A. There are regulations that go beyond what a
9 302 asks for and which I am personally giving advice
10 over. There's more to security than what a 302 asks
11 for. There's more than what a joint accreditation
12 program asks for.

13 My job is to assess risk and to develop
14 a program that protects people, assets. And I
15 don't -- there is no one hospital, there is no one
16 security program that fits all. So you have to take
17 each one on an individual basis.

18 Q. Do you know the standard that a hospital must
19 abide by when involuntarily holding a patient in
20 their facility?

21 A. That's only a mandatory minimum standard.
22 That doesn't mean they're not morally obligated to
23 do more.

24 Q. Well, what, in your mind, is the mandatory
25 minimum standard that a hospital must use when



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2 detaining an involuntary patient?

3 A. We answered that much earlier when we said it
4 depends on the risk assessment, it depends on the
5 circumstances, it depends on the inherent risk, it
6 depends on the facility, where it's located, a great
7 many variables that mandate how a hospital should
8 view its risks and go beyond this minimum standard.

9 As an example, would you like to live in
10 a building that only had pull stations? Because
11 that was the township's minimum standard for fire
12 alarms. Wouldn't you like to have had smoke
13 detectors in the basement and sprinklers and other
14 things even though they were not mandatory issues?

15 So we go beyond what are mandatory --
16 what are minimum and go to what we feel are
17 legitimate defensive strategies based on risks that
18 are identified.

19 Q. Do you know the minimum standard then that
20 the hospital must provide when being involved with
21 an involuntary patient?

22 MR. PENNINGTON: I'm going to object,
23 because there's medical standards, there's
24 psychiatric standards. I think you got to be very
25 specific as to what standard you're talking about.



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2 MR. YANINEK: Okay.

3 MR. PENNINGTON: If you're talking about
4 a security standard --

5 MR. YANINEK: I'll rephrase the
6 question. I'll rephrase the question.

7 BY MR. YANINEK:

8 Q. Mr. Somerson, do you know the minimum
9 standard at which a hospital must adhere to when
10 detaining an individual subject to a 302 commitment?

11 A. Well, it varies, but essentially, yes.

12 Q. Well, please tell me what you know.

13 A. Well, it depends on whether or not they have
14 security officers, whether they're using their own
15 in-house people.

16 There are certain procedures that
17 they're supposed to follow. There are certain
18 screening that they're supposed to follow in
19 reviewing the people who they're bringing in to
20 ascertain what their conditions are, and they're
21 supposed to be under observation, so -- and to
22 inhibit elopement from occurring. And those are
23 acceptable in different variables. There's no one
24 fixed set standard.

25 Q. So the laws and regulations of the



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2 Commonwealth and the Federal regulations related to
3 patient care are inapplicable to detention of a 302
4 patient?

5 A. No. I said they're nebulous.

6 Q. Well, I want to know what you know.

7 A. I just answered you. I don't know more than
8 that. I'd have to -- I didn't expect to have to
9 study the 302 regs to be here today.

10 Q. Well, is it important that you know what a
11 hospital is required to provide a patient who is
12 involuntarily brought to their facility?

13 A. Yes, I do know, but you don't like my answer.

14 Q. Well, I want to --

15 A. I think they have to go well beyond 302.
16 They have to go well beyond the Joint Accreditation,
17 and they have to take it as a very serious risk to
18 the community, to the patient, to the people who
19 work in the hospital. And I believe the minimum
20 standards do not accommodate that.

21 Q. What are the minimum standards as prescribed?

22 A. I think that depends on whether you're
23 talking Joint Accreditation or whether you're
24 talking 302.

25 Q. Well, what does 302 minimum standards



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2 | require?

3 A. 302 says that they're under supervision. 302
4 says they go through a specific screening. I don't
5 have it memorized. 302 says that they're basically
6 controlled while they're in the environment. And I
7 think it differs depending on the kind of
8 institution.

9 Joint Accreditation doesn't require it
10 to be a security officer. They'll accredit a
11 hospital that doesn't even have security officers
12 but have other trained personnel.

13 So I'm saying it's very nebulous, it's
14 very loose, and it's set up, essentially, to
15 accommodate the healthcare industry.

16 Q. So as far as this case is concerned and as
17 far as what you reviewed, have you found any
18 violation of any law or regulation on the part of
19 Holy Spirit Hospital in dealing with Ryan Schorr on
20 November 18, 2000?

21 A. What I found was a total violation of
22 standard security industry practices or standard of
23 care. I did not find violation of law because I
24 don't think the law would have even, if it was fully
25 in effect, have prevented what occurred, because it



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2 was inadequate to have done so.

3 Q. Okay. So are you agreeing, then, that Holy
4 Spirit Hospital did not violate any law or
5 regulation in relation to the care provided to Ryan
6 Schorr on November 18, 2000?

7 MR. PENNINGTON: I'm going to have to
8 object to that.

9 THE WITNESS: Do I answer?

10 MR. YANINEK: It's opinion.

11 MR. PENNINGTON: Any law or regulation.
12 I mean, you have to be a little bit more specific
13 than that. I mean, even your guy doesn't cite any
14 law or regulation. He cites an accreditation thing.

15 But, I mean, you're asking him to answer
16 a question where you failed to lay any foundation.
17 You got a specific law, show it to him, or
18 regulation.

19 MR. YANINEK: He's the expert. He's the
20 one that's supposed to define the standard of care.

21 MR. PENNINGTON: I mean, he's an expert
22 on security. He's not an expert on anything other
23 than that.

24 MR. YANINEK: Well, then I'll ask him in
25 the context of security and his opinion.



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2 MR. PENNINGTON: Okay.

3 BY MR. YANINEK:

4 Q. Mr. Somerson, relative to security, did you
5 find that Holy Spirit Hospital violated any law or
6 regulation related to Ryan Schorr on November 18,
7 2002?

8 A. No.

9 MR. HAUCK: I think you meant to say
10 2000.

11 BY MR. YANINEK:

12 Q. On 2000, I mean. The answer is still the
13 same?

14 A. Yeah.

15 Q. Did Holy Spirit Hospital violate any
16 published standard related to security in relation
17 to the treatment of Ryan Schorr?

18 A. Standard security practices, not standard or
19 standards of care, yes.

20 Q. Okay. Did Holy Spirit violate any written
21 standard related to the security in its treatment of
22 Ryan Schorr on November 18th, 2000?

23 A. This question cannot be answered with a yes
24 or a no. May I make a not yes or no answer? You
25 tell me.



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2 Q. Well, is there a written standard that you
3 found that they violated?

4 A. There is no written standards in the security
5 industry --

6 Q. Okay.

7 A. -- that deal with the security of any
8 building unless it deals with highly technical
9 standards, like thickness of metal, thickness of
10 doors. There are no written standards,
11 quote/unquote, for how much security is, quote,
12 enough, end quote.

13 Q. Okay. So how much security is required is
14 subject to interpretation?

15 A. It's subject to an adequate analysis of the
16 risk and a reasonably-minded response to trying to
17 prevent it by detection, by deterrence, by denial.

18 Q. Your interpretation might be different than
19 someone else's interpretation of what those risks
20 and --

21 A. Standard security practices have evolved over
22 a long period of time, and if I were to bring in --
23 we have roughly about 80 members of the
24 International Association of Professional Security
25 Consultants. And if I were to list for them the



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2 risks that existed at the hospital, I believe you
3 would have had an 80 percent acceptance of the
4 recommendations we would have given. That's
5 called -- you can't get the same answer from a
6 doctor when you go in to get an examination, but
7 it's still a standard of care when a doctor tells
8 you to take this medicine.

9 So that's what we're working under, the
10 same scientific analysis and conclusions.

11 Q. Did you read Mr. Rolle's opinions?

12 A. Yes.

13 Q. Would it be fair to say that he disagrees
14 with some of your propositions?

15 A. No, he doesn't disagree. He relies entirely
16 on the Joint Accreditation program, which, in my
17 opinion, is a very minimum standard and a very weak
18 standard in response to inherent risks of security
19 at hospitals, especially emergency environments.

20 Q. Okay. Did you find that Holy Spirit Hospital
21 breached any standards that the Joint Commission of
22 Accreditation for hospitals have in relation to Ryan
23 Schorr's treatment back in November 18th of 2000?

24 A. Since on the security level I do not consider
25 the Joint Accreditation's standards or standard



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2 practices to be anywhere nearly adequate in the
3 circumstances surrounding this case, I would have a
4 very difficult time agreeing with Mr. Rolle or
5 agreeing with their conclusions. He just simply did
6 not use a process to identify risk.

7 Q. Although you disagree with their standard, is
8 it true that, based on your evaluation, Holy Spirit
9 Hospital met that standard --

10 A. No.

11 Q. -- back in November?

12 Okay. How did they not meet that
13 standard, then?

14 A. By not knowing the risks.

15 Q. Mr. Rolle, you cited in your report --

16 A. I'm Somerson.

17 Q. I'm sorry. Mr. Somerson, excuse me, you
18 recited in your report instances of other elopements
19 at the hospital?

20 A. Yes.

21 Q. Some of them being in the emergency room and
22 some of them being psychiatric inpatients?

23 A. Correct.

24 Q. How is an elopement by a psychiatric
25 inpatient similar to an emergency room elopement?



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2 A. Essentially, it identifies that there is a
3 physiology or a psychology that allows people who
4 are involuntarily restrained to think that they can
5 elope, that there is not a sufficient methodology,
6 either physical or psychological or procedural, in
7 place to deter the elopement from occurring.

8 Q. So in your mind, elopements should be totally
9 eliminated?

10 A. Should be mitigated considerably more so. I
11 mean, nothing, nothing is guaranteed.

12 In my younger life, I protected
13 dignitaries, and always knew that in spite of my
14 best efforts, we would lose a dignitary every now
15 and then.

16 But the number and the persistence that
17 I see here on Pages 2 and 3 suggest a far greater
18 weakness.

19 Q. You don't know what the conditions of these
20 psychiatric patients were that eloped, do you?

21 A. No. I would love to have that. That's why I
22 call this a preliminary report.

23 Q. You did evaluation of a number of hospitals?

24 A. Yes.

25 Q. Recently you said you did one of Temple?



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2 A. Yes.

3 Q. Do they have a psychiatric unit?

4 A. Yes.

5 Q. Were there elopements from that unit?

6 A. I don't remember.

7 Q. You did one of University of Pennsylvania
8 most recently?

9 A. I don't remember. And I might add, it would
10 be confidential and subject to a confidentiality
11 agreement.

12 Q. Well, generally speaking, regarding the care
13 of individuals at a hospital, are you aware that
14 elopements do exist at hospitals?

15 A. Sure. It's an inherent risk.

16 Q. Are you aware of the frequency of elopements
17 at a hospital?

18 A. No. I'd have to study each individual
19 institution on its own basis.

20 Q. Did you study Holy Spirit Hospital?

21 A. No.

22 Q. Do you know how many patients Holy Spirit
23 Hospital holds?

24 A. No.

25 Q. Wouldn't that be important for you to know



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2 related to the number of elopements they have?

3 A. If this case moves forward, that's one of the
4 questions I would ask and follow up on, including a
5 greater detail on these elopements.

6 Q. Well, you came up with an opinion already, I
7 assume?

8 A. Yes.

9 Q. And you stated in that opinion that there
10 were persistent prior elopements?

11 A. Yes.

12 Q. Well, in order to understand whether or not
13 there is an elopement problem, wouldn't you need to
14 know how many individuals or patients the hospital
15 services?

16 A. Well, a lot of my papers have been pushed
17 around, but let me try and find something for you.
18 It's in my initial report.

19 Q. You have your report in front of you.

20 A. Yeah, but that's -- I wrote a comment on one
21 other copy of the report. If I could see another
22 one of my reports that's on this table, it would be
23 very helpful. I have a handwritten note earlier
24 today on one of them.

25 THE WITNESS: Do you have one?



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2 MR. PENNINGTON: No, not other than you
3 sent to me. Why don't you just give him your best
4 recollection.

5 THE WITNESS: The percentage of --

6 MR. PENNINGTON: Would it be on Rolle's
7 here?

8 MR. YANINEK: No. Don't give him
9 Rolle's, because I'm asking him what he had or what
10 information he had prior to issuing an opinion.

11 BY MR. YANINEK:

12 Q. That's the question I'm asking, sir.

13 A. Okay. But let's -- please.

14 Q. No. He's trying to give you the information.

15 A. I'm not asking --

16 MR. PENNINGTON: I'm not trying to do
17 that at all. I resent that. And if you want to get
18 mad, let me tell you something, we'll end right
19 here. One thing we're not going to have is physical
20 intimidation.

21 You want to throw papers around and slap
22 him around, we're going to end it right now. You
23 either act professionally or we end it right now.
24 You make the choice. You want to be a tough guy?
25 Not with me.



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2 THE WITNESS: On one of these pieces of
3 paper earlier today while waiting for everybody --

4 MR. PENNINGTON: He has a right to
5 anything that he's looking for.

6 BY MR. YANINEK:

7 Q. Can you answer my question without looking at
8 Mr. Rolle's report?

9 A. The answer is that on one of my reports
10 today, while studying it before you arrived, I wrote
11 down the increase in elopements by a percentage and
12 showed that it was a growing problem versus a static
13 problem. And it was just a small group of numbers.
14 And it wasn't on my Curriculum Vitae. It was on one
15 of the pieces of paper that I reviewed. It's on one
16 of the pieces of paper on this table.

17 That's it. That's the whole issue here.

18 Q. Okay. I want to take Mr. Rolle's report
19 aside, because I believe that information is located
20 in the report. I want to give you time to look
21 through --

22 MR. PENNINGTON: No. This is mine. I'm
23 going to keep it right here, because this is what he
24 looked at. You don't grab documents from me and
25 tell him you're going to set them aside.



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2 I am not going to show those documents
3 to him, and I resent any implication that I'm trying
4 to provide him with information.

5 MR. YANINEK: I want to know an
6 answer --

7 MR. PENNINGTON: If you think I've
8 committed an ethical violation, put it on the
9 record.

10 MR. YANINEK: No. I'm trying to find
11 out an answer to my question, whether or not he knew
12 how many patients there were in Holy Spirit Hospital
13 or the capacity for patients in the year 2000.

14 THE WITNESS: I answered that. I said I
15 didn't know.

16 BY MR. YANINEK:

17 Q. Okay. Did you know how many psychiatric
18 patients they dealt with on a yearly basis around
19 2000?

20 A. No.

21 Q. Did you know how many patients they had at
22 the emergency room before you authored your
23 report --

24 A. No.

25 Q. -- in a yearly basis?



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2 A. No.

3 Q. Prior to rendering your report, wouldn't that
4 information have been helpful to know, how
5 persistent, quote/unquote, the elopements were at
6 Holy Spirit Hospital?

7 A. I considered the information that I had
8 sufficient to prepare the preliminary report that I
9 rendered. I would always like to have more
10 information, and I would be happy to do a supplement
11 report at anyone's request.

12 Q. Okay. I'm going to refer you to Page 6 of 8
13 of your report.

14 A. Yes, sir.

15 Q. Under the Opinion section.

16 A. Yes.

17 Q. First bullet comment, "Defendants failed to
18 assess their foreseeable security risks arising from
19 the services they performed in relationship to
20 admitting 302 involuntary commitments, especially
21 with regard to the admission of plaintiff,
22 11/18/2000."

23 What were the foreseeable security risks
24 that they failed to assess?

25 A. Well, I have to go through the entire risk



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2 assessment, but the inherent risks of the operation
3 they ran, the demographics of the community they
4 were in, their prior history, the lack of adequate
5 defensive strategies to have prevented elopements
6 from occurring, would be the four major. There are
7 others. I'm not trying to do an entire risk
8 assessment for you.

9 Q. I understand.

10 The next bullet deals with, "Defendants'
11 persistent history at the subject location provided
12 defendants notice that their security program was
13 inadequate and needed to be upgraded so that it
14 could adequately deter, detect, deny, respond to
15 and/or recover from the security risks arising from
16 elopements from the emergency department and psych
17 unit."

18 When you give that opinion, is that
19 based solely on the elopements listed on Pages 2 and
20 3?

21 A. Yes.

22 Q. The next bullet, "The comments and behavior
23 of plaintiff, as observed and overheard and
24 subsequently described by defendants' nursing and
25 medical staff in Room 17 of the subject location,



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2 exhibited an obvious potential for plaintiff to
3 elope and/or be dangerous to himself and/or other
4 persons."

5 A. Yes.

6 Q. Specifically, what behavior do you point to
7 that he exhibited that would have made him an
8 elopement risk prior to the elopement?

9 A. Are you finished?

10 Q. Yes.

11 A. His desire to be somewhere else in a hurry,
12 him having a major agenda elsewhere, his
13 hallucinating over his self-importance, his
14 harassability and his irritability I would say would
15 be my unprofessional -- now, you must understand
16 that I did take courses in crisis resolution and I
17 do have some modicum of understanding violence in
18 the workplace. And if I was in that room, I would
19 consider him to have been a violent risk and an
20 elopement risk.

21 Q. So do you consider the third bullet comment a
22 psychiatric or psychological opinion?

23 A. No; a lay person's opinion, security
24 consultant's opinion.

25 Q. Based on what expertise?



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2 A. Based on 40 years of violence in the
3 workplace experience, both for the government and
4 for major multi-national corporations, for prisons
5 and for other environments. But as a security
6 consultant, not as a medical person.

7 Q. I want to take you to Page 7 of 8.

8 A. I'm there.

9 Q. The second bullet comment under Opinion on
10 that page, it says, "On November 18, 2000, it was
11 apparent that defendants had failed to adequately
12 train and supervise their in-service medical,
13 nursing, medical support staff and security officer
14 in the appropriate manner of conducting involuntary
15 commitments."

16 A. Yes.

17 Q. What type of training should they have had,
18 in your opinion?

19 A. Well, first of all, they should have never
20 let that officer leave the ER under any
21 circumstances.

22 Q. That was a conduct. That was something that
23 he did. What type of training --

24 A. That's indicative of poor training and poor
25 supervision.



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2 so that they could have dealt with the response more
3 adequately.

4 Q. What do you know specifically in the amount
5 of information that should have been provided?

6 A. Mr. Schorr was a threat of violence.

7 Q. Okay. Weren't they already aware of that
8 from the 302 warrant itself?

9 A. No. There's a difference between a 302
10 warrant where someone asks somebody to be committed
11 involuntarily for the sake of evaluation and someone
12 who elopes and now exhibits signs of violent
13 behavior. Those are two very different things.

14 Q. Well, do you know the basis of why the
15 original warrant was issued?

16 A. No, I don't, other than a relative asked for
17 it to occur.

18 Q. So you don't have any knowledge that it wa
19 related to violence or threat of violence?

20 A. It was my understanding -- and I don't
21 remember exactly where I read it -- that somebody
22 was concerned that he was a threat to himself.

23 Q. Well, how did that change from the fact that
24 he eloped?

25 A. If I were the security officer who went in as



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